

Emergency Rule
LSA Document #12-133(E)

DIGEST

Temporarily adds provisions to establish procedures for right to work complaints. Statutory authority: [IC 22-6-6-11](#). Effective March 15, 2012.

SECTION 1. (a) This document governs complaints filed with the department of labor alleging a violation or threatened violation of [IC 22-6-6](#).

(b) This document applies to written or oral contracts or agreements entered into, modified, renewed, or extended after March 14, 2012. It does not apply to or abrogate a written or oral contract or agreement in effect on March 14, 2012, except to the extent such contract is later modified, renewed, or extended.

(c) This document does not apply to the following:

(1) An employee of the United States or a wholly owned corporation of the United States.

(2) An:

(A) employee; and

(B) employer;

subject to the federal Railway Labor Act (45 U.S.C. 151 et seq.).

(3) An employee employed on property over which the United States government has exclusive jurisdiction for the purpose of labor relations.

(4) An employee of the state.

(5) An employee of a political subdivision (as defined in [IC 36-1-2-13](#)).

SECTION 2. The following definitions apply throughout this document:

(1) "Department" means the Indiana department of labor.

(2) "Employee" means an individual who is:

(A) employed by; or

**(B) an applicant for employment with;
an employer at the time an alleged violation occurred.**

(3) "Employer" means:

(A) a person employing at least one (1) individual in Indiana; or

(B) an agent of an employer described in subdivision (3)(A) [clause (A)].

(4) "Respondent" means a person who is the subject of a complaint filed under [IC 22-6-6-11](#).

(5) "Violation" means a violation of [IC 22-6-6-8](#).

SECTION 3. (a) An employee may file a complaint alleging that a person has required the employee to:

(1) become or remain a member of a labor organization;

(2) pay dues, fees, assessments, or other charges of any kind or amount to a labor organization; or

(3) pay to a charity or third party an amount that is equivalent to or a pro rata part of dues, fees, assessments, or other charges required of members of a labor organization;

as a condition of employment or continuation of employment in violation of [IC 22-6-6-8](#).

(b) The complaint shall:

(1) be filed on a form designated by the department for that purpose;

(2) be complete and accurate;

(3) include copies of any documents that support the employee's claim; and

(4) be signed by the employee.

(c) A complaint must be filed within ninety (90) days of the date of the alleged violation. For purposes of this SECTION, the violation occurs at the time an individual is required to:

(1) become or remain a member of a labor organization;

(2) pay dues, fee, assessments, or other charges of any kind or amount to a labor organization; or

(3) pay to a charity or third party an amount that is equivalent to or a pro rata part of dues, fees, assessments, or other charges required of members of a labor organization.

(d) If a person requires an employee to affirmatively decline membership or payment of dues, fees, assessments, or other charges, the violation occurs when, and continues as long as, the employer fails to follow the employee's instructions.

SECTION 4. (a) The department shall review each complaint to determine if it complies with SECTION 3 *[of this document]* and states facts alleging a possible violation.

(b) If the department determines that the complaint does not:

(1) state facts alleging a violation; or

(2) comply with the requirements in SECTION 3 *[of this document]*;

the department may close its file without further investigation and shall notify the individual who filed the complaint that the complaint is closed.

(c) If the department determines that the complaint warrants further investigation, the department shall notify the respondent that a complaint has been filed and provide the respondent with the substance of the complaint. The respondent may submit a written response to the complaint. Any response must be submitted within thirty (30) days of the date the department notifies the respondent that a complaint has been filed.

(d) In conducting its investigation, the department shall inspect records provided by the respondent and employee. The department may review additional information or conduct interviews of:

(1) the employer;

(2) the employee; or

(3) other witnesses.

SECTION 5. (a) If after conducting an investigation, the department determines that a violation has occurred, the department may conduct a hearing to determine if an administrative order should be issued against the respondent.

(b) Proceedings under this SECTION are governed by [IC 4-21.5](#).

(c) The department may appoint an administrative law judge to conduct the hearing and issue a recommended order.

(d) The recommended order may be affirmed, modified, or dissolved under the procedures described in [IC 4-21.5-3-29](#).

(e) The administrative order issued under this SECTION may award any or all of the following to an individual who prevails in an action under this SECTION:

(1) The greater of:

(A) actual and consequential damages resulting from the violation or threatened violation; or

(B) liquidated damages of not more than one thousand dollars (\$1,000).

(2) Reasonable attorney's fees and costs of bringing the action.

(3) Declaratory or equitable relief, including injunctive relief.

(4) Other relief that the department finds is proper.

(f) If a violation continues over a period of time, any relief awarded under subdivision (e)(1) of this SECTION is limited to the time period beginning ninety (90) days prior to the date the employee filed a complaint with the department.

SECTION 6. (a) The department and the respondent are parties to the proceeding under SECTION 5 of this document.

(b) Another person who would be aggrieved or adversely affected by an administrative order issued under SECTION 5 *[of this document]* may petition to intervene in the proceeding.

(c) Petitions for intervention shall comply with [IC 4-21.5-3-21](#).

SECTION 7. (a) This SECTION supplements the requirements contained in [IC 4-21.5-3-1](#).

(b) Unless otherwise provided by this rule or by statute, each party shall be served with:

- (1) every order required by its terms to be served;
- (2) every document filed;
- (3) every paper relating to discovery required to be served upon a party; and

(c) Whenever a party is represented by an attorney of record, service shall be made upon the attorney.

(d) Except as provided in subsection (e) or as otherwise provided by law, a person shall serve papers by:

- (1) United States mail;
- (2) personal service;
- (3) electronic mail; or
- (4) any method approved by the Indiana Rules of Trial Procedure or [IC 4-21.5](#).

(e) The following shall be served by United States mail or personal service:

- (1) the initial notice of hearing; and
- (2) the final administrative order;

issued under **SECTION 5** *[of this document]*.

(f) When a document is served by personal service, it shall be served by:

- (1) handing it to the attorney or party;
- (2) leaving it at the attorney's or party's address of record with a clerk or other person in charge thereof, or if there is no one in charge, leaving it in a conspicuous place therein.

(g) If service is made by mail, the papers shall be deposited in the United States mail, or with any third-party commercial carrier, properly addressed to the person on whom they are being served, with postage prepaid. Service shall be deemed complete upon mailing. Proof of service of all papers permitted to be mailed may be made by written acknowledgment of service, by affidavit of the person who mailed the papers, or by certificate of an attorney.

(h) If service is made by electronic mail, it shall be sent to the electronic mail address designated by the party.

(i) When an attorney enters an appearance in a proceeding or files pleadings or papers therein, the attorney shall include the attorney's address, telephone number, and electronic mail address, if applicable. Service by delivery or by mail at the attorney's address shall be deemed sufficient and complete.

(j) Pleadings and other papers shall be signed by the party or his attorney. Such signing constitutes a representation by the signer that he has read the document and that, to the best of his knowledge, information, and belief the statements made therein are true and the document is not interposed for delay.

SECTION 8. The computation of any period of time in a proceeding under this document shall be done pursuant to [IC 4-21.5-3-2](#).

SECTION 9. This document expires June 13, 2012.

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